

Breaking a lease

If you have a fixed-term tenancy agreement (often called a lease), and you want to move out before the end of the fixed term, you may be able to break your lease in one of the following ways. You need to take care because some methods of breaking a lease may involve costs.

Mutual consent

Any tenancy agreement can be ended by 'mutual agreement' between the landlord and tenant. We strongly advise that you get the agreement in writing, and that it states that you will not be liable for any additional costs or compensation for breaking the lease. You and your landlord or agent should sign the agreement. Make sure you keep a copy.

When the landlord is in breach

If your landlord is in breach of any of their 'duties' under the *Residential Tenancies Act 1997* you may be able to end your tenancy early. This applies if the landlord:

- > hasn't made sure the property was reasonably clean and vacant when you were supposed to move in
- > doesn't make sure you have 'quiet enjoyment' of the property
- > doesn't keep the property in good repair
- > doesn't provide locks that secure external doors and windows, or doesn't give you a key when they change a lock
- > doesn't replace a faulty water appliance with an A-rated appliance

To end your tenancy before the end of the fixed term for any of the above breaches of duty by the landlord, there are certain steps that you need to take.

1. The first step is to send your landlord a Breach of Duty Notice to inform them that they must fix the problem (and if appropriate, pay you compensation) within 14 days.
2. If the landlord fails to do so, you can apply to the Victorian Civil and Administrative Tribunal for a Compliance Order.
3. If the landlord doesn't abide by the Compliance Order, you can send them a 14-day Notice of Intention to Vacate.

4. You can also send your landlord a 14-day Notice of Intention to Vacate if you have sent them a Breach of Duty Notice twice before for the same breach, and your landlord breaches that duty for a third time.

For more information contact the Tenants Union or see the ***When you want to leave*** and ***Giving your landlord a Breach of Duty Notice*** fact sheets.

Assignment

Instead of breaking your lease, it may be easier to hand over or 'assign' your tenancy agreement to another tenant. However this is not always the simplest option as you will need to get the landlord's consent, update the tenancy agreement and arrange for the transfer of the bond so you can't be held accountable for the other tenant. Also, the landlord can charge you the reasonable cost of preparing an assignment in writing but they cannot charge for creating a new tenancy agreement with new tenants. See the ***Assignment and sub-letting*** fact sheet for more information.

Hardship

If something unforeseen happens and it will cause you severe hardship to stay in the property until the end of the fixed term, you can apply to the Victorian Civil and Administrative Tribunal to reduce the period of your fixed term and allow you to end your tenancy. You should ask the Tribunal to hear your case as quickly as possible. You must continue to pay rent as usual, until the hearing has taken place. If you plan to apply for hardship, you must do so before you move out.

To claim hardship, you will have to prove to the Tribunal that:

- > there has been an unforeseen change in your circumstances (eg you have lost your job) and you will suffer severe hardship if the tenancy continues; and
- > the hardship you will suffer if the tenancy is not ended will be greater than the hardship of the landlord if the tenancy is ended

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You may still have to compensate the landlord if you break your lease due to hardship. See 'Costs' below.

Hardship and family violence

If you are a 'protected person' on a family violence intervention order and you need to move out of the property to protect yourself or your children, you can apply to the Tribunal to reduce the period of your fixed term and allow you to end your tenancy on hardship grounds.

If you are excluded from a rental property due to a family violence order, you also have the right to apply to the Tribunal to reduce the period of your fixed term and allow you to end the lease early on hardship grounds.

Giving up possession

If none of the above ways of breaking a lease are an option for you, you can end your fixed-term tenancy early by giving up possession of the property. This is usually done by giving the landlord notice that you will vacate the property (ie Notice of Intention to Vacate) and handing back the keys when you move out.

Costs

Breaking a lease on the grounds of hardship or by giving up possession can be costly. The landlord can claim compensation for any reasonable costs they have to pay as a result of you breaking the lease.

The costs you could be liable for include:

- > a reletting fee (usually one or two weeks' rent). This must be based on the fee that the agent charged the landlord so it is a good idea to ask for a copy of the invoice
- > reasonable advertising costs
- > rent until new tenants move in or until the end of the fixed term (whichever happens first)

➡ What the landlord or agent may not tell you is that you only have to pay the reletting fee on a pro-rata basis, which means you only have to cover the fee for the remaining term of the lease. For example, if you leave 7 months into a 12-month tenancy agreement, there is only about 40% of the fixed term remaining so you only have to pay 40% of the reletting fee.

Managing the costs

If you want to break your lease, you should give as much notice as possible in writing (keep a copy of your letter). It is a good idea to state the exact date you will be leaving and that you want the landlord or agent to find a new tenant. The landlord is expected to take all reasonable steps to find a new tenant as quickly as possible. The more you can do to help find a new tenant (such as having the property available for inspection, or advertising the property yourself) the less you are likely to have to pay.

➡ You should only pay rent up until the day that you vacate. Once the new tenants move in, you can then pay the landlord compensation for any lost rent.

You should make sure the landlord or agent are taking steps to relet the property after you give notice, and check the date that new tenants move in. The landlord has a duty to keep their loss to a minimum, so if they do anything to make it harder to find a new tenant (such as putting up the rent), or if they don't make an effort to find a new tenant, you can argue that you should not have to pay them the full amount of compensation.

➡ Check the Properties to Let section in the major newspapers and the Rental Listings available from the agent. If you have internet access, you can also check the agent's website. If the property is not being advertised or is being advertised at a higher rent, keep this as evidence that the landlord has not tried to keep their loss to a minimum.

If you think the costs that your landlord is claiming are unreasonable, don't agree to pay. The landlord will then have to make a claim against your bond or apply to the Victorian Civil and Administrative Tribunal for compensation. The landlord must give you notice of their claim and you will have a chance to present your side of the story to the Tribunal. See the **Defending a compensation claim** and **Bonds** fact sheets for more information.

For more information, phone the Tenants Union Advice Line on ☎ (03) 9416 2577.